

**Editor's note: Reconsideration denied by Order dated March 24, 1993**

EARTH SCIENCES, INC.

IBLA 90-519

Decided July 23, 1992

Appeal from a decision of the Director, Minerals Management Service, affirming an order assessing minimum royalties. MMS-89-0176-MIN.

Affirmed.

1. Mineral Leasing Act: Royalties--Potassium Leases and Permits:  
Royalties

It is proper for MMS to assess the full amount of the minimum royalty in lieu of production from a potassium lease for the calendar year in which the lease relinquishment was filed, without pro-rata reduction.

APPEARANCES: Mark H. McKinnies, President, Earth Sciences, Inc., Golden, Colorado, for appellant; Howard W. Chalker, Esq., Geoffrey Heath, Esq., Peter J. Schaumberg, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Earth Sciences, Inc. (Earth Sciences), has appealed from a June 7, 1990, decision of the Director, Minerals Management Service (MMS), denying Earth Sciences' appeal from a March 3, 1989, order by the Chief, Lessee Contact Branch, Royalty Management Program (RMP), MMS, assessing minimum royalties in lieu of production from nine potassium leases.

Earth Sciences recognizes that its nine potassium leases call for payment of minimum royalties in lieu of production. 1/ In section 2(d) of the leases Earth Sciences agreed,

[b]eginning with the sixth full calendar year of the lease, \* \* \* to mine each year the leased deposits from any of the lands

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1/ This case involves potassium leases U-12329, U-12330, U-12758, U-12939, U-13121, U-13122, U-13123, U-14446, and U-15619, issued to Earth Sciences pursuant to the Mineral Leasing Act, 30 U.S.C. § 282 (1988), effective Feb. 1, 1983. They encompass land situated in T. 29 S., Rs. 13 through 16 W., and T. 30 S., R. 15 W., Salt Lake Meridian. All are in Beaver County, Utah.

covered by th[e] lease to a royalty value of \$2 per acre or fraction thereof, or in lieu of any mining to pay minimum royalty in an amount sufficient to make the royalty total \$2 per acre or fraction thereof. [2/]

Nor does it dispute MMS' calculation of a \$27,342 yearly minimum royalty for the leased acreage.

Earth Sciences' appeal is based upon its contention that it is not liable for all of the 1989 minimum royalties because it had relinquished all of some of the leases and portions of the others. In his June 1990 decision, the Director noted the Earth Sciences relinquishment but found the advance royalties due because Earth Sciences filed its relinquishment after the royalties accrued on January 1, 1989, which was the beginning of the sixth full calendar year.

The facts regarding the relinquishment are not at issue. Earth Sciences relinquished 9,473.35 acres out of a total of 13,828.44 leased acres by a letter dated December 30, 1988. Earth Sciences' relinquish-ment was received by the Lessee Contact Branch, RMP, on January 3, 1989, forwarded to the Utah State Office, Bureau of Land Management (BLM), and received by BLM on January 9, 1989. 3/

The Director concluded that under section 4 of the leases the relinquishment was not effective until Earth Sciences' letter was received by BLM on January 9, 1989. Under section 4 of the lease the lessee may "surrender the entire lease or any legal subdivision thereof," but provides that a "relinquishment must be filed \* \* \* in the appropriate BLM office" and "[u]pon its acceptance it shall be effective as of the date it is filed." (Emphasis added.) Citing 43 CFR 3500.5, the Director held that the date of "fil[ing]" was the date of receipt by BLM.

Earth Sciences recognizes that it is liable for some minimum royalties in the event that its relinquishment was not filed on or before the beginning of the sixth full calendar year of the leases. It contends that its relinquishment was filed with MMS' Lessee Contact Branch "on December 30, 1988" (Statement of Reasons for Appeal (SOR) at 4), and argues that it had been led by the Department to believe that this MMS office was the appropriate office for filing a relinquishment when it was instructed to address all correspondence concerning the leases to that office. Id. at 2. It concludes that the relinquishment was properly filed prior to the beginning of the sixth full calendar year and thus no minimum royalties are due for the relinquished acreage.

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2/ This lease provision is derived from 30 U.S.C. § 283 (1988) and 43 CFR 3503.3-2(b)(2) (1983).

3/ Leases U-12329, U-12330, U-13123, and U-12758 (totalling 4,353.35 acres) were relinquished in their entirety. Portions of the remaining leases (totalling 5,120 acres) were also relinquished.

[1] In its March 9, 1989, appeal to the Director, Earth Sciences argued that December 30, 1988, the date it mailed its relinquishment letter, was the date of filing with MMS. However, Earth Sciences cited no applicable statute or Departmental regulation in support of that position. <sup>4/</sup> On appeal there is no explanation in Earth Sciences' SOR for its continued conclusion that the documents were filed on December 30. On the other hand, the Director noted in his decision that, under 43 CFR 3500.5(a), the date of filing "necessary documents" for potassium and other solid mineral leases is the date the document is received in the proper BLM office. See also, e.g., Thomas H. Fee, 58 I.D. 125, 127 (1942); see generally United States v. Lombardo, 241 U.S. 73, 76 (1916).

Under the lease terms Earth Sciences agreed to be subject to the lease terms and "all reasonable regulations of the Secretary of the Interior now or hereafter in force, when not inconsistent with any express and specific provisions herein." Leases, at 1; see generally Coastal Oil & Gas Corp., 108 IBLA 62, 65-66 (1989), appeal filed, Coastal Oil & Gas Corp. v. Lujan, No. H-89-2118 (S.D. Tex. June 20, 1989). Section 4 of the leases states that a relinquishment "must be filed \* \* \* with the appropriate BLM office. Upon its acceptance it shall be effective as of the date it is filed \* \* \*." This lease provision, the regulation at 43 CFR 3509.1-2, and the regulation at 43 CFR 3500.5(a) (which defines when applicable documents are deemed to be filed) are all applicable to potassium lease relinquishments. Under 43 CFR 3500.5(a) a document relinquishing lease acreage is deemed to be filed when received, and we find no inconsistency between the requirement in the lease that relinquishment must be filed with BLM and the regulation which states that it is filed when received. <sup>5/</sup> When a relinquishment is submitted under section 4 of the leases it is "filed" on the date of receipt, not the date it was mailed.

Earth Sciences' relinquishment was not filed prior to January 1, 1989. Under the circumstances it does not matter whether the document was filed when received in the MMS office on January 3, or when received by BLM on January 9. However, we find it appropriate to clarify this issue. Section 4 of the leases provides that relinquishment documents "must be filed in the appropriate BLM office." The applicable regulation, 43 CFR 3509.1-2 (formerly 43 CFR 3523.1-1 (1983)), also requires filing "in the proper BLM office." We find no basis for finding that the specific language of the lease and the regulation are somehow negated by MMS' general advisory statement that correspondence should be addressed to the MMS office. Compare with Garland Coal & Mining Co., 52 IBLA 60, 65-66, 88 I.D. 24, 26 (1981). MMS is a component of the Department distinct from BLM. See Satellite 8307193, 85 IBLA 357, 360 (1985). Earth Sciences' relinquishment was not filed until it was received by the proper BLM office after January 1, 1989. Cf. James Chudnow, 86 IBLA 315 (1985) (oil and gas

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<sup>4/</sup> Earth Sciences states only that "[g]enerally and for many other legal matters (e.g. filing date of tax returns) the date of mailing is considered the date filed" (Letter to MMS, dated Oct. 11, 1989, at 1).

<sup>5/</sup> 43 CFR 3500.5(a) was promulgated in 1986.

lease). Under section 4 of the leases and 43 CFR 3509.1-2 the subsequent BLM acceptance of the relinquishment became effective on the date of receipt.

Earth Sciences also contends that, if it is deemed to have relinquished the leases after the beginning of the sixth full calendar year, it is liable for minimum royalties only for that portion of the year prior to relinquishment rather than for the entire year. It argues that assessing royalties for the entire year is contrary to the leases provisions and applicable regulations because "royalties" are payable monthly and are not like lease rental which is payable annually in advance of January 1 (SOR at 5).

Under section 2(b) of the leases, royalties based on minerals actually produced from the leased land and calculated as a percentage of the value of production are payable monthly. See 30 CFR 218.200. Production royalties are distinguishable from minimum royalty payable in the event of no production. Section 2(d) of the leases requires the lessee, "[b]eginning with the sixth full calendar year of the lease," either "to mine" the leased deposit (in which case production royalties would be owed) or, in lieu of mining, "to pay minimum royalty." 6/ This minimum royalty is to be paid "in advance" of the sixth full and succeeding calendar years in which no mining is anticipated. 43 CFR 3503.2-2(c). Any amount paid as a minimum royalty is treated as a credit against production royalties owing in the year for which the minimum royalty is assessed. Id.

Minimum royalties and rentals are both payable in advance of the beginning of a calendar year. See 43 CFR 3531.2-1(a). Both accrue on January 1 if no relinquishment is filed prior to the end of the preceding calendar year. See Southwest Salt Co., 2 IBLA 81, 85, 86 (1971); cf., e.g., Humble Oil & Refining Co., 64 I.D. 5, 8 (1957), and Thomas H. Fee, supra at 127 (oil and gas leases). Congress gave specific relief from the potassium lessee's obligation to pay the full year's rental by providing that on relinquishment the lessee is only liable for a prorated portion of the rental. See 30 U.S.C. § 188a (1988); Garland Coal & Mining Co., supra at 70, 72, 88 I.D. at 29, 30. However, no similar relief is afforded for minimum royalty payments.

Both section 4 of the leases and 43 CFR 3509.1-2 (formerly 43 CFR 3523.1-2 (1983)) state that relinquishment is "subject to the continued obligation of the lessee \* \* \* to make payment of all accrued \* \* \* royalties." (Emphasis added.) 7/ Minimum royalties are to be paid "in advance"

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6/ Section 2(d) of the leases is derived from the statutory requirement that potassium leases are to be "conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof." 30 U.S.C. § 283 (1988).

7/ This language was derived from the general statutory provision that the acceptance of a relinquishment of a mineral lease "thereby relieve[s] the lessee] of all future obligations," but not those which have already arisen. 30 U.S.C. § 187 (1988) (emphasis added).

of a calendar year (43 CFR 3503.2-2(c)), and therefore have accrued and are owing on the first of January. 8/ Earth Sciences' subsequent relinquishment of the leases, in full and in part, did not relieve it of any part of its obligation to pay the accrued advance royalties. It remained obligated, under 43 CFR 3509.1-2, to pay these royalties in full. MMS is entitled to charge minimum royalties for the entire calendar year. The Director properly upheld the assessment of the full amount of the minimum royalties in lieu of production for calendar year 1989. 9/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen  
Administrative Judge

I concur in the result:

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Franklin D. Arness  
Administrative Judge

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8/ We note that Earth Sciences had been notified by an Oct. 27, 1988, MMS letter of the upcoming deadline for paying minimum royalties, which stated that such royalties were required to be paid "in advance of the lease year beginning 01/01/89." (Emphasis in original.) In an Oct. 11, 1989, letter to MMS at page 1, Earth Sciences admitted that "the first business day of 1989 [was] when the advance royalty became due."

9/ Earth Sciences requested a hearing before an Administrative Law Judge to allow it to submit facts and elicit testimony from employees of MMS and BLM who participated in the decision on appeal. Under 43 CFR 4.415 we have the authority to order a hearing. However we will normally decline to do so without an identified "issue of fact" material to resolution of the pending appeal. Id.; see, e.g., Woods Petroleum Co., 86 IBLA 46, 55 (1985). Earth Sciences has failed to identify any material issue of fact. Its request is denied.

